

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
JOSE ALVITES CENTENO; JULIO GERARDO
HERNANDEZ; CARLOS MIZHQUIRI; JORGE
MORANTE; CARLOS SORIA; JESUS SORIA; JOSE
SORIA; MICHAEL SORIA; ROBERTO SORIA; and
WALTER SUAREZ-VASQUEZ,, individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

DBD CONTRACTING LLC; MARK STAVIN,
individually and as officer, director, and or principal of
DBD CONTRACTING LLC; and JOHN DOES 1-5,

Defendants.
----- X

Case No.:

17 Civ. 7121 (JFB)(GRB)

ANSWER

Defendants DBD Contracting LLC (“DBD”) and Mark Stavin (DBD and Stavin, collectively, the “Defendants”), by their attorneys, Tannenbaum Helpert Syracuse & Hirschtritt LLP, as and for their Answer to the Complaint of the specifically named individual Plaintiffs in the caption of this action (“Plaintiffs”), filed December 6, 2017, (the “Complaint”), allege as follows:

AS TO “INTRODUCTION”

1. Defendants deny the allegations contained in Paragraph “1” of the Complaint, except admit that Plaintiffs purport to bring a class and collection action against them.
2. Defendants deny the allegations contained in Paragraph “2” of the Complaint, except admit that certain of the Plaintiffs performed painting and/or spackling duties.
3. Defendants deny the allegations contained in Paragraph “3” of the Complaint.
4. Defendants deny the allegations contained in Paragraph “4” of the Complaint.

5. Defendants deny the allegations contained in Paragraph “5” of the Complaint.

6. Defendants deny the allegations contained in Paragraph “6” of the Complaint.

7. With respect to the allegations contained in Paragraph “7” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required; provided, however, that Defendants deny any liability under the New York Labor Law (“NYLL”) or Wage Theft Prevention Act (“WTPA”).

8. Defendants deny the allegations contained in Paragraph “8” of the Complaint, including, without limitation, that there exists any proper collection action under the Fair Labor Standards Act (“FLSA”).

9. Defendants deny the allegations contained in Paragraph “9” of the Complaint, including, without limitation, that there exists any proper class under the NYLL.

10. Defendants deny the allegations contained in Paragraph “10” of the Complaint.

11. Defendants deny the allegations contained in Paragraph “11” of the Complaint.

AS TO “JURISDICTION AND VENUE”

12. With respect to the allegations contained in Paragraph “12” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required.

13. With respect to the allegations contained in Paragraph “13” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required.

14. With respect to the allegations contained in Paragraph “14” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required.

AS TO "THE PARTIES"

15. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "15" of the Complaint.

16. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "16" of the Complaint.

17. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "17" of the Complaint.

18. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "18" of the Complaint.

19. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "19" of the Complaint.

20. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "20" of the Complaint.

21. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "21" of the Complaint.

22. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "22" of the Complaint.

23. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "23" of the Complaint.

24. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "24" of the Complaint.

25. Defendants admit the allegations contained in Paragraph "25" of the Complaint.

26. With respect to the allegations contained in Paragraph "26" of the Complaint,

which set forth conclusions of law, no response is required; except Defendants admit that DBD employed the Plaintiffs.

27. With respect to the allegations contained in Paragraph “27” of the Complaint, which set forth conclusions of law, no response is required; except Defendants admit that DBD employed the specifically named plaintiffs set forth in the caption of this action.

28. With respect to the allegations contained in Paragraph “28” of the Complaint, which set forth conclusions of law, no response is required; except Defendants admit that DBD has had revenues exceeding \$500,000.

29. With respect to the allegations contained in Paragraph “29” of the Complaint, which set forth conclusions of law, no response is required.

30. Defendants admit that Stavín is the owner of DBD, but otherwise deny the allegations contained in Paragraph “30” of the Complaint.

31. With respect to the allegations contained in Paragraph “31” of the Complaint, which set forth conclusions of law, no response is required; except Defendants deny that Stavín is a resident of the State of New York.

32. With respect to the allegations contained in Paragraph “32” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required.

33. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “33” of the Complaint.

34. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “34” of the Complaint.

35. With respect to the allegations contained in Paragraph “35” of the Complaint,

which set forth conclusions of law or consist of Plaintiffs' characterization of their own Complaint, no response is required.

AS TO "STATEMENT OF FACTS"

36. Defendants admit the allegations contained in Paragraph "36" of the Complaint.

37. Defendants admit the allegations contained in Paragraph "37" of the Complaint.

38. Defendants deny the allegations contained in Paragraph "38" of the Complaint, except admit that certain of the Plaintiffs performed painting and/or spackling duties.

39. Defendants deny the allegations contained in Paragraph "39" of the Complaint, except admit that certain of the Plaintiffs performed painting and/or spackling duties.

40. With respect to the allegations contained in Paragraph "40" of the Complaint, which set forth conclusions of law or consist of Plaintiffs' characterization of their own Complaint, no response is required.

41. Defendants deny the allegations contained in Paragraph "41" of the Complaint.

42. Defendants deny the allegations contained in Paragraph "42" of the Complaint.

43. Defendants deny the allegations contained in Paragraph "43" of the Complaint.

44. Defendants deny the allegations contained in Paragraph "44" of the Complaint.

45. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "45" of the Complaint.

46. Defendants deny the allegations contained in Paragraph "46" of the Complaint.

47. Defendants deny the allegations contained in Paragraph "47" of the Complaint.

48. Defendants admit that DBD's regular payweek begins on Monday and ends on Sunday, but otherwise deny the allegations contained in Paragraph "48" of the Complaint.

49. Defendants deny the allegations contained in Paragraph "49" of the Complaint.

50. Defendants deny the allegations contained in Paragraph “50” of the Complaint.
51. Defendants deny the allegations contained in Paragraph “51” of the Complaint.
52. Defendants deny the allegations contained in Paragraph “52” of the Complaint.
53. Defendants deny the allegations contained in Paragraph “53” of the Complaint.
54. Defendants deny the allegations contained in Paragraph “54” of the Complaint.
55. Defendants deny the allegations contained in Paragraph “55” of the Complaint.
56. Defendants deny the allegations contained in Paragraph “56” of the Complaint.
57. Defendants deny the allegations contained in Paragraph “57” of the Complaint.
58. Defendants deny the allegations contained in Paragraph “58” of the Complaint.
59. Defendants deny the allegations contained in Paragraph “59” of the Complaint.
60. Defendants deny the allegations contained in Paragraph “60” of the Complaint.
61. Defendants deny the allegations contained in Paragraph “61” of the Complaint.
62. Defendants deny the allegations contained in Paragraph “62” of the Complaint.
63. Defendants deny the allegations contained in Paragraph “63” of the Complaint.
64. Defendants deny the allegations contained in Paragraph “64” of the Complaint.
65. Defendants deny the allegations contained in Paragraph “65” of the Complaint.
66. Defendants deny the allegations contained in Paragraph “66” of the Complaint.
67. Defendants deny the allegations contained in Paragraph “67” of the Complaint.
68. Defendants deny the allegations contained in Paragraph “68” of the Complaint.
69. Defendants deny the allegations contained in Paragraph “69” of the Complaint.
70. Defendants deny the allegations contained in Paragraph “70” of the Complaint.
71. Defendants deny the allegations contained in Paragraph “71” of the Complaint.
72. Defendants deny the allegations contained in Paragraph “72” of the Complaint.

73. Defendants deny the allegations contained in Paragraph “73” of the Complaint.

74. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “74” of the Complaint.

75. Defendants admit that each Plaintiff was not provided each piece of information contained in Paragraph “75” “at the time of hiring and before every February 1 of each year,” but Defendants deny that there exists any such requirement.

76. Defendants deny the allegations contained in Paragraph “76” of the Complaint.

77. Defendants deny the allegations contained in Paragraph “77” of the Complaint.

78. Defendants deny the allegations contained in Paragraph “78” of the Complaint.

79. Defendants deny the allegations contained in Paragraph “79” of the Complaint.

80. Defendants deny the allegations contained in Paragraph “80” of the Complaint.

81. Defendants deny the allegations contained in Paragraph “81” of the Complaint.

82. Defendants deny the allegations contained in Paragraph “82” of the Complaint.

83. Defendants deny the allegations contained in Paragraph “83” of the Complaint.

84. Defendants deny the allegations contained in Paragraph “84” of the Complaint.

85. Defendants deny the allegations contained in Paragraph “85” of the Complaint.

86. Defendants deny the allegations contained in Paragraph “86” of the Complaint.

87. Defendants deny the allegations contained in Paragraph “87” of the Complaint.

88. Defendants deny the allegations contained in Paragraph “88” of the Complaint.

89. Defendants respectfully refer the Court to the contents of the “Letter,” which speaks for itself, and otherwise deny the allegations contained in Paragraph “89” of the Complaint.

90. Defendants deny the allegations contained in Paragraph “90” of the Complaint.

91. Defendants deny the allegations contained in Paragraph "91" of the Complaint.
92. Defendants deny the allegations contained in Paragraph "92" of the Complaint.
93. Defendants deny the allegations contained in Paragraph "93" of the Complaint.
94. Defendants deny the allegations contained in Paragraph "94" of the Complaint.
95. Defendants deny the allegations contained in Paragraph "95" of the Complaint.
96. Defendants deny the allegations contained in Paragraph "96" of the Complaint.
97. Defendants deny the allegations contained in Paragraph "97" of the Complaint.
98. Defendants deny the allegations contained in Paragraph "98" of the Complaint.
99. Defendants deny the allegations contained in Paragraph "99" of the Complaint.
100. Defendants deny the allegations contained in Paragraph "100" of the Complaint.
101. Defendants deny the allegations contained in Paragraph "101" of the Complaint.
102. Defendants deny the allegations contained in Paragraph "102" of the Complaint.
103. Defendants deny the allegations contained in Paragraph "103" of the Complaint.
104. Defendants deny the allegations contained in Paragraph "104" of the Complaint.
105. Defendants deny the allegations contained in Paragraph "105" of the Complaint.
106. Defendants deny the allegations contained in Paragraph "106" of the Complaint.
107. Defendants deny the allegations contained in Paragraph "107" of the Complaint.
108. Defendants deny the allegations contained in Paragraph "108" of the Complaint.
109. Defendants deny the allegations contained in Paragraph "109" of the Complaint.
110. Defendants deny the allegations contained in Paragraph "110" of the Complaint.
111. Defendants deny the allegations contained in Paragraph "111" of the Complaint.
112. Defendants deny the allegations contained in Paragraph "112" of the Complaint.
113. Defendants deny the allegations contained in Paragraph "113" of the Complaint.

114. Defendants deny the allegations contained in Paragraph “114” of the Complaint.

115. Defendants deny the allegations contained in Paragraph “115” of the Complaint.

116. Defendants deny the allegations contained in Paragraph “116” of the Complaint.

117. Defendants deny the allegations contained in Paragraph “117” of the Complaint.

118. Defendants admit that Mizhurgiri resigned his employment with DBD in or around January 2017, but otherwise deny the allegations contained in Paragraph “118” of the Complaint.

119. Defendants deny the allegations contained in Paragraph “119” of the Complaint.

120. Defendants deny the allegations contained in Paragraph “120” of the Complaint.

121. Defendants deny the allegations contained in Paragraph “121” of the Complaint.

122. Defendants deny the allegations contained in Paragraph “122” of the Complaint.

123. Defendants deny the allegations contained in Paragraph “123” of the Complaint.

124. Defendants deny the allegations contained in Paragraph “124” of the Complaint.

125. Defendants deny the allegations contained in Paragraph “125” of the Complaint.

126. Defendants deny the allegations contained in Paragraph “126” of the Complaint.

127. Defendants deny the allegations contained in Paragraph “127” of the Complaint.

128. Defendants deny the allegations contained in Paragraph “128” of the Complaint.

129. Defendants deny the allegations contained in Paragraph “129” of the Complaint.

130. Defendants deny the allegations contained in Paragraph “130” of the Complaint.

131. Defendants deny the allegations contained in Paragraph “131” of the Complaint.

132. Defendants deny the allegations contained in Paragraph “132” of the Complaint.

133. Defendants deny the allegations contained in Paragraph “133” of the Complaint.

134. Defendants deny the allegations contained in Paragraph “134” of the Complaint.

135. Defendants deny the allegations contained in Paragraph “135” of the Complaint.
136. Defendants deny the allegations contained in Paragraph “136” of the Complaint.
137. Defendants deny the allegations contained in Paragraph “137” of the Complaint.
138. Defendants deny the allegations contained in Paragraph “138” of the Complaint.
139. Defendants deny the allegations contained in Paragraph “139” of the Complaint.
140. Defendants deny the allegations contained in Paragraph “140” of the Complaint.
141. Defendants deny the allegations contained in Paragraph “141” of the Complaint.
142. Defendants deny the allegations contained in Paragraph “142” of the Complaint.
143. Defendants deny the allegations contained in Paragraph “143” of the Complaint.
144. Defendants deny the allegations contained in Paragraph “144” of the Complaint.
145. Defendants deny the allegations contained in Paragraph “145” of the Complaint.
146. Defendants deny the allegations contained in Paragraph “146” of the Complaint.
147. Defendants deny the allegations contained in Paragraph “147” of the Complaint.
148. Defendants admit that J. Soria resigned his employment with DBD in or around October 2016, but otherwise deny the allegations contained in Paragraph “148” of the Complaint.
149. Defendants deny the allegations contained in Paragraph “149” of the Complaint.
150. Defendants deny the allegations contained in Paragraph “150” of the Complaint.
151. Defendants deny the allegations contained in Paragraph “151” of the Complaint.
152. Defendants deny the allegations contained in Paragraph “152” of the Complaint.
153. Defendants deny the allegations contained in Paragraph “153” of the Complaint.
154. Defendants deny the allegations contained in Paragraph “154” of the Complaint.
155. Defendants deny the allegations contained in Paragraph “155” of the Complaint.
156. Defendants deny the allegations contained in Paragraph “156” of the Complaint.

157. Defendants admit that Jo. Soria resigned his employment with DBD in or around November 2016, but otherwise deny the allegations contained in Paragraph “157” of the Complaint.

158. Defendants deny the allegations contained in Paragraph “158” of the Complaint.

159. Defendants deny the allegations contained in Paragraph “159” of the Complaint.

160. Defendants deny the allegations contained in Paragraph “160” of the Complaint.

161. Defendants deny the allegations contained in Paragraph “161” of the Complaint.

162. Defendants deny the allegations contained in Paragraph “162” of the Complaint.

163. Defendants deny the allegations contained in Paragraph “163” of the Complaint.

164. Defendants deny the allegations contained in Paragraph “164” of the Complaint.

165. Defendants deny the allegations contained in Paragraph “165” of the Complaint.

166. Defendants admit that M. Soria resigned his employment with DBD in or around October 2016, but otherwise deny the allegations contained in Paragraph “166” of the Complaint.

167. Defendants deny the allegations contained in Paragraph “167” of the Complaint.

168. Defendants deny the allegations contained in Paragraph “168” of the Complaint.

169. Defendants deny the allegations contained in Paragraph “169” of the Complaint.

170. Defendants deny the allegations contained in Paragraph “170” of the Complaint.

171. Defendants deny the allegations contained in Paragraph “171” of the Complaint.

172. Defendants deny the allegations contained in Paragraph “172” of the Complaint.

173. Defendants deny the allegations contained in Paragraph “173” of the Complaint.

174. Defendants deny the allegations contained in Paragraph “174” of the Complaint.

175. Defendants admit that R. Soria resigned his employment with DBD in or around November 2016, but otherwise deny the allegations contained in Paragraph “175” of the

Complaint.

- 176. Defendants deny the allegations contained in Paragraph “176” of the Complaint.
- 177. Defendants deny the allegations contained in Paragraph “177” of the Complaint.
- 178. Defendants deny the allegations contained in Paragraph “178” of the Complaint.
- 179. Defendants deny the allegations contained in Paragraph “179” of the Complaint.
- 180. Defendants deny the allegations contained in Paragraph “180” of the Complaint.
- 181. Defendants deny the allegations contained in Paragraph “181” of the Complaint.
- 182. Defendants deny the allegations contained in Paragraph “182” of the Complaint.
- 183. Defendants deny the allegations contained in Paragraph “183” of the Complaint.
- 184. Defendants admit that Suarez-Vasquez resigned his employment with DBD in or around January 2017, but otherwise deny the allegations contained in Paragraph “184” of the Complaint.

AS TO “FLSA COLLECTIVE ACTION ALLEGATIONS”

185. With respect to the allegations contained in Paragraph “185” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required, except Defendants deny that there exists any appropriate “collective action” class under the FLSA in this case.

- 186. Defendants deny the allegations contained in Paragraph “186” of the Complaint.
- 187. Defendants deny the allegations contained in Paragraph “187” of the Complaint.
- 188. Defendants deny the allegations contained in Paragraph “188” of the Complaint.
- 189. Defendants deny the allegations contained in Paragraph “189” of the Complaint.
- 190. Defendants deny the allegations contained in Paragraph “190” of the Complaint.
- 191. Defendants deny the allegations contained in Paragraph “191” of the Complaint.

192. Defendants deny the allegations contained in Paragraph “192” of the Complaint.

193. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “193” of the Complaint.

194. Defendants deny the allegations contained in Paragraph “194” of the Complaint.

195. Defendants deny the allegations contained in Paragraph “195” of the Complaint.

AS TO “RULE 23 CLASS ACTION ALLEGATIONS”

196. With respect to the allegations contained in Paragraph “196” of the Complaint, which set forth conclusions of law or consist of Plaintiffs’ characterization of their own Complaint, no response is required, except Defendants deny that there exists any appropriate class under the NYLL in this case.

197. Defendants deny the allegations contained in Paragraph “197” of the Complaint.

198. Defendants deny the allegations contained in Paragraph “198” of the Complaint.

199. Defendants deny the allegations contained in Paragraph “199” of the Complaint.

200. Defendants deny the allegations contained in Paragraph “200” of the Complaint.

201. Defendants deny the allegations contained in Paragraph “201” of the Complaint.

202. Defendants deny the allegations contained in Paragraph “202” of the Complaint.

203. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “203” of the Complaint.

204. Defendants deny the allegations contained in Paragraph “204” of the Complaint.

205. Defendants deny the allegations contained in Paragraph “205” of the Complaint.

206. Defendants deny the allegations contained in Paragraph “206” of the Complaint.

207. Defendants deny the allegations contained in Paragraph “207” of the Complaint.

208. Defendants deny the allegations contained in Paragraph “208” of the Complaint.

AS TO "CAUSES OF ACTION"

209. Defendants repeat and reallege Paragraphs "1" through "208" hereof with the same force and effect as if set forth at length herein.

210. Defendants deny the allegations contained in Paragraph "210" of the Complaint.

211. Defendants deny the allegations contained in Paragraph "211" of the Complaint.

212. Defendants deny the allegations contained in Paragraph "212" of the Complaint.

213. Defendants deny the allegations contained in Paragraph "213" of the Complaint.

214. Defendants repeat and reallege Paragraphs "1" through "213" hereof with the same force and effect as if set forth at length herein.

215. Defendants deny the allegations contained in Paragraph "215" of the Complaint.

216. Defendants deny the allegations contained in Paragraph "216" of the Complaint.

217. Defendants deny the allegations contained in Paragraph "217" of the Complaint.

218. Defendants deny the allegations contained in Paragraph "218" of the Complaint.

219. Defendants deny the allegations contained in Paragraph "219" of the Complaint.

220. Defendants repeat and reallege Paragraphs "1" through "219" hereof with the same force and effect as if set forth at length herein.

221. Defendants deny the allegations contained in Paragraph "221" of the Complaint.

222. Defendants deny the allegations contained in Paragraph "222" of the Complaint.

223. Defendants deny the allegations contained in Paragraph "223" of the Complaint.

224. Defendants deny the allegations contained in Paragraph "224" of the Complaint.

225. Defendants repeat and reallege Paragraphs "1" through "224" hereof with the same force and effect as if set forth at length herein.

226. Defendants deny the allegations contained in Paragraph "226" of the Complaint.

227. Defendants deny the allegations contained in Paragraph “227” of the Complaint.

228. Defendants deny the allegations contained in Paragraph “228” of the Complaint.

229. Defendants deny the allegations contained in Paragraph “229” of the Complaint.

230. Defendants repeat and reallege Paragraphs “1” through “229” hereof with the same force and effect as if set forth at length herein.

231. Defendants deny the allegations contained in Paragraph “231” of the Complaint.

232. Defendants deny the allegations contained in Paragraph “232” of the Complaint.

233. Defendants deny the allegations contained in Paragraph “233” of the Complaint.

234. Defendants deny the allegations contained in Paragraph “234” of the Complaint.

235. Defendants deny the allegations contained in Paragraph “235” of the Complaint.

236. Defendants repeat and reallege Paragraphs “1” through “235” hereof with the same force and effect as if set forth at length herein.

237. Defendants deny the allegations contained in Paragraph “237” of the Complaint.

238. Defendants deny the allegations contained in Paragraph “238” of the Complaint.

239. Defendants deny the allegations contained in Paragraph “239” of the Complaint.

240. Defendants deny the allegations contained in Paragraph “240” of the Complaint.

241. Defendants repeat and reallege Paragraphs “1” through “240” hereof with the same force and effect as if set forth at length herein.

242. Defendants deny the allegations contained in Paragraph “242” of the Complaint.

243. Defendants deny the allegations contained in Paragraph “243” of the Complaint.

244. Defendants deny the allegations contained in Paragraph “244” of the Complaint.

245. Defendants deny the allegations contained in Paragraph “245” of the Complaint.

246. Defendants repeat and reallege Paragraphs “1” through “245” hereof with the

same force and effect as if set forth at length herein.

247. Defendants deny the allegations contained in Paragraph “247” of the Complaint.

248. Defendants deny the allegations contained in Paragraph “248” of the Complaint.

249. Defendants deny the allegations contained in Paragraph “249” of the Complaint.

250. Defendants deny the allegations contained in Paragraph “250” of the Complaint.

251. Defendants repeat and reallege Paragraphs “1” through “250” hereof with the same force and effect as if set forth at length herein.

252. Defendants deny the allegations contained in Paragraph “252” of the Complaint.

253. Defendants deny the allegations contained in Paragraph “253” of the Complaint.

254. Defendants deny the allegations contained in Paragraph “254” of the Complaint.

255. Defendants deny the allegations contained in Paragraph “255” of the Complaint.

AS TO “PRAYER FOR RELIEF”

Defendants deny that Plaintiffs (or any putative “Collective and Class Plaintiffs”) are entitled to any of the relief requested in the “WHEREFORE” Paragraph of the Complaint, including subparagraphs “1” through “15” thereof.

AS TO “DEMAND FOR TRIAL BY JURY”

Defendants deny that the Plaintiffs are entitled to any trial by jury or that there exists any triable issues of fact.

AFFIRMATIVE DEFENSES

1. Plaintiffs’ claims are barred, in whole or in part, by their failure to state a claim upon which relief may be granted.

2. One or more Plaintiffs, including, without limitation, Jorge Morante, entered into an agreement that, among other things, provides for mandatory arbitration of any and all disputes

arising out of or relating to his employment, and the maintenance of this court action is therefore barred and improper.

3. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

4. Plaintiffs' claims are barred, in whole or in part, because Defendants have made a complete and timely payment of wages owed to Plaintiffs.

5. Plaintiff's claims are barred, in whole or in part, to the extent that any uncompensated time is *de minimis* or was preliminary or postliminary principal activities.

6. Plaintiffs are not entitled to civil penalties, prejudgment/post-judgment interest, statutory damages, liquidated damages, punitive damages, or an extended statute of limitations because any alleged act or omission giving rise to Plaintiffs' claims was made in good faith and was not willful or reckless, and because Defendants had reasonable grounds for believing that any such alleged act or omission was not a violation of the FLSA or NYLL.

7. Plaintiffs' claims are not maintainable or cognizable as a collective and/or class action since there is no community of interest or similarity between Plaintiffs and any member of the purported class or collective action; because Plaintiffs and the persons they purport to represent are not "similarly situated" with the respect to the claims alleged, rendering this case unsuitable for collective action treatment; because individual issues and facts substantially predominate over common issues and facts, if any, rendering this case unsuitable for class action treatment; because no ascertainable class exists; because a collective and/or class action is not a superior method for adjudicating the disputes Plaintiffs allege; because Plaintiffs fail to establish sufficient numerosity, commonality, and typicality; and because Plaintiffs are neither an adequate, suitable, nor appropriate class representatives for the classes they purport to represent.

8. Plaintiffs' claims are barred, in whole or in part, by the doctrines of unclear hands, estoppel, waiver, or *in pari delicto*, and their otherwise wrongful conduct.

9. Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs have been overpaid, received monies to which they are not entitled, or otherwise by off-sets or credits.

10. Plaintiffs' claims are barred, in whole or in part, because the Defendants have a good faith, legitimate, and non-retaliatory business reason with respect to each action affecting Plaintiffs' employment.

11. Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate, minimize or avoid the damage about which they now complain.


12. If and to the extent a collective or class action is certified, then the Defendants reserve the right to assert the same or additional affirmative defenses in respect of the collective or class members' claims.

* * * * *

WHEREFORE, Defendants respectfully request that this Court award judgment: (a) dismissing Plaintiffs' Complaint with prejudice in its entirety; and (b) granting such other and further relief as this Court may deem just and proper, including, without limitation, interest, reasonable attorneys' fees, costs, and disbursements.

Dated: New York, New York
April 16, 2018

**TANNENBAUM HELPERN
SYRACUSE & HIRSCHTRITT LLP**

By: 
Jason B. Klimpl
900 Third Avenue, 13th Floor
New York, New York 10022
(212) 508-6700
klimpl@thsh.com

Attorneys for Defendants

To: Matthew L. Berman, Esq.
Valli Kane & Vagnini LLP
600 Old Country Road, Suite 519
Garden City, New York 11530
[via ECF]

Attorneys for Plaintiffs